

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1306 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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STAR LAMINATES PVT LTD

Versus

STATE OF GUJARAT  
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Appearance:

MR KS NANAVATI for Petitioners  
MR DN PATEL AGP for Respondent No. 1  
RULE SERVED for Respondent No. 3  
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CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 07/04/2000

ORAL JUDGEMENT

#. The petitioner being aggrieved by an order made by Joint Industries Commissioner dated 4/3/1986 has filed this petition with a prayer to issue a writ of mandamus directing the respondents to entertain the application of the petitioner company for grant of Cash Subsidy.

#. The relevant facts which are required to be considered for disposal of this petition are as under.

#. The petitioner No.1 - Star Laminates Pvt. Ltd. is engaged in manufacture of decorative and industrial laminated sheets. In view of the policy known as Cash Subsidy annexed to the petition at Annexure-A (Resolution of Government of Gujarat, Industries, Mines and Power Department dated 22/12/1977), the petitioner approached respondent Nos. 2 and 3 by making an application at Annexure-B/1 on 21/10/1982 for Cash Subsidy on the ground that the petitioner-company has purchased standby unit and is entitled to Cash Subsidy. From the record, Mr.S.N.Thakkar, Learned Advocate appearing for Mr.Nanavati for the petitioner submitted that the project was put up somewhere in the year 1978 and the production commenced by the end of 1979. Against the investment made by the petitioner at the relevant time, as per the scheme, Cash Subsidy was granted. Learned counsel submitted that by an application annexed to the petition at Annexure B/1 it was pointed out that the registration was granted to the petitioner unit on the basis of total investment of land, building and plant / machinery to the tune of Rs.1,19,80,000/= which was divided as under :-

|                   |                  |
|-------------------|------------------|
| Land & Building   | Rs. 27,50,000/=  |
| Plant & Machinery | Rs. 92,30,000/=  |
| -----             |                  |
| Total             | Rs.1,19,80,000/= |
| -----             |                  |

It is admitted position that in the year 1979 as the petitioner erected a unit, Cash Subsidy to the tune of Rs.9,85,856/- was granted @15% as per policy. By the aforesaid letter, the petitioner addressed the authority that as on 30/9/82 investment of land, building, plant and machinery works out to Rs.91,95,013.84, detailed as under:-

|                   |                  |
|-------------------|------------------|
| Land              | Rs. 3,36,110.00  |
| Building          | Rs. 22,98,121.16 |
| -----             |                  |
|                   | Rs. 26,34,231.16 |
| Plant & Machinery | Rs. 65,60,782.68 |
| -----             |                  |

Total Rs. 91,95,013.84

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#. In view of this, petitioner claimed that subsidy for the value of the investment as on 30/9/82 totalling to Rs.20,37,480.90 should be taken into consideration @15%. That application was decided by the Joint Industries Commissioner vide Annexure-C dated 4/3/1986 rejecting the application pointing out that the investment is by way of standby equipment and it cannot be said that it has expanded the production capacity. The learned counsel submitted that it makes no difference as the registration was for the total sum of Rs.1,19,80,000/= and even after the commencement of the unit and after subsidy being granted, if there is further investment, the petitioner is entitled to get the benefit as the same is within the limit of registration already granted. As against this Mr.Patel learned AGP for the respondents pointed out that considering the scheme, after commencement of production if there is any investment it must have some relation with either expansion of capacity or modernization or diversification and that too as per the limit prescribed. If it is not expansion within the meaning of clause-C of definitions of the policy, thence, the petitioner is not entitled to claim the benefit.

#. It is required to be noted that for the purpose of assessment of the capital investment Clause-D of the definition clause is required to be considered. So far as plant and machinery are concerned it indicates the value of plant and machinery, the cost of plant and machinery as erected at site will be taken into account, which will include the cost of productive equipments such as tools, jigs, dies and moulds. It further states that the transport charges, insurance premium, erection cost etc. will also be taken account. The said clause also refers to modernization / diversification etc. and it suggests that the balancing equipments / accessories etc. added to the main plant and machinery for modernization / diversification etc. will also be taken into account while computing the value of plant and machinery. This is not the case of either modernization or diversification or expansion. By providing a standby unit surely the capacity has not been increased. Standby unit is to be put in use in place of similar existing unit in case it becomes inoperative. It is not to be used simultaneously. That apart after the commencement of the factory if anything is added by way of investment then in that case whether it should be considered as expansion or not is a vital question. According to the learned counsel in the instant case, by providing a

standby unit the petitioner thought that the production activities will be uninterrupted and will not cause any reduction in production. According to learned counsel it amounts to expansion of capacity as there will be uninterrupted production. That may be so but by providing a standby unit it cannot be said that the amount is spent for the purpose of expansion of the unit.

#. Clause (i) of the scheme provides procedure for disbursement of Cash Subsidy. The application for registration may be for a higher amount on the basis of figures submitted by the petitioner but when actual disbursement is made, the cost may be lesser than indicated. The application for disbursements stands disposed of the moment, the unit is erected, the cost of erection is placed before respondents and on the basis of which amount is disbursed. After the amount is paid as per the scheme if the petitioner has spent further amount may be for the purpose of repairs or for the purpose of standby unit it cannot be said that it is for the purpose of expansion of capacity. Clause (c) reads as under :-

'Expansion' means increase in the value of fixed capital investment of an industrial unit by not less than 25% for the purpose of expansion of capacity or modernization or diversification.

Reading this clause it is very clear that it refers to value of fixed capital investment of an industrial unit but it also says that it should not be less than 25% for the purpose of expansion of capacity or modernization or diversification. When the amount is not spent for the purpose of expansion of capacity it cannot be said that the respondent has committed an error in interpreting the clause (c) aforesaid considering the gap between the commencement of production and the installation of standby unit. It is very clear that the petitioner was in a position to run the unit for a pretty long period without standby unit. Under the circumstances it cannot be said that the respondents have committed any error in interpreting the clause 'expansion' as used in the policy.

#. Learned counsel for the petitioner submitted that in the subsequent policy the word 'Expansion' is used in a different manner. According to learned counsel, for the subsequent policy there is a specific reference to an increase in physical production to the extent of at least 25% of original installed capacity for continuous period of at least 12 months. Learned counsel submitted that

reading this scheme it clearly appears that the respondents have decided keeping in mind the production as envisaged in subsequent policy. It is true that the subsequent policy refers to the physical production. However, the policy in force at the relevant time refers to the expenditure incurred for the purpose of expansion of capacity. Person will have to spend amount for the purpose of expansion of capacity of the unit.

#. The policy in force at the relevant time refers to expansion of capacity. The provision has been made in subsequent policy, with a view to give benefit to the industries which really increased the production after expansion. The policy makers might have been realised that mere expansion of capacity of the industry is not beneficial. With additional production of 25% as envisages, would be really productive, and would provide employment to others. Considering such aspects policy makers made changes. However, it does not mean that when the policy in question was in force expansion of capacity is to be given go bye and for any investment amount is to be disbursed after unit has already commenced the production. Merely because in subsequent policy The word actual physical production or a period is mentioned it does not mean that earlier policy does not refer to the expansion of capacity.

In view of what is stated hereinabove having no merits in the petition, the petition is required to be rejected with costs, which is quantified at Rs.2,000/=. Rule is discharged. Interim relief granted earlier by the court stands vacated.

(B.C.Patel, J.)

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